

CLEATUS SYPULT

IBLA 95-538, 96-9

Decided April 2, 1998

Appeals from decisions by the Montana State Office, Bureau of Land Management, declaring the Cleatus and Cleatus #1 lode mining claims (MMC 103650 and MIMMC 196930), and the Roadrunner placer claim (MIMMC 192880) null and void ab initio because they had been located on land which had been withdrawn from mineral entry at the time of location.

Vacated.

1. Mining Claims: Powersite Lands--Mining Claims Rights
Restoration Act--Withdrawals and Reservations:
Powersites

Lands subject to a preliminary permit issued to a prospective licensee by the Federal Energy Regulatory Commission are not open to mineral location, and mining claims located on such lands are null and void ab initio.

APPEARANCES: Cleatus Sypult, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Cleatus Sypult has appealed three decisions of the Montana State Office, Bureau of Land Management (BLM). The first Decision, dated June 13, 1995, declared the Cleatus #1 lode mining claim (MIMMC 196930) null and void ab initio because it had been located on land which had been withdrawn from mineral entry at the time of location. The second Decision, dated June 16, 1995, declared the Roadrunner placer claim (MIMMC 192880) null and void ab initio because it had been located on land which had been withdrawn from mineral entry at the time of location. These appeals were consolidated and docketed as IBLA 95-538. The third Decision, dated July 17, 1995, declared the Cleatus lode mining claim (MMC 103650) null and void ab initio because it had been located on land which had been withdrawn from mineral entry at the time of location. The case file for this appeal was received by the Board some time after the first two and it was docketed as IBLA 96-9. In that the parties are identical and the issues are similar, we hereby consolidate the third appeal with the first two.

The Cleatus #1 lode mining claim was located on May 2, 1994, and recorded with BLM on June 28, 1994. A map submitted by Sypult depicts the claim as being located in Lots 5 and 6, sec. 13, T. 11 N., R. 2 W.,

Montana Principal Meridian. The Roadrunner placer claim was located on September 1, 1992, and recorded with BLM on October 29, 1992. A map submitted by Sypult depicts the claim as being located in the SW $\frac{1}{4}$, sec. 24, T. 11 N., R. 2 W., Montana Principal Meridian. The Cleatus lode mining claim was located on July 6, 1983, and recorded with BLM on September 30, 1983. A map submitted by Sypult depicts the claim as being located in Lot 7 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 13, T. 11 N., R. 2 W., Montana Principal Meridian.

The Decisions all cited section 24 of the Federal Power Act of 1920, as amended, 16 U.S.C. § 818 (1994), as the basis for finding the claims null and void ab initio. The Decisions all state:

In accordance with the provisions of Section 24 of the Act of June 10, 1920, as amended, those portions of the land below the 3636-foot contour elevation included in Power Project #2188, which includes lands located in Power Reserves 9, 141, and 499, for which application for license was filed, were withdrawn from entry, location or other disposal under the laws of the United States by letter from the Federal Power Commission (FPC) dated May 19, 1953.

The Federal Power Act provides that "[a]ny lands of the United States included in any proposed project * * * shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress." 16 U.S.C. § 818 (1994). Section 24 of the Federal Power Act also contains procedures by which a powersite withdrawal may be removed and the land opened to mineral location or other types of entry. *Id.* In 1955, Congress enacted the Mining Claims Rights Restoration Act, 69 Stat. 681 (codified as amended at 30 U.S.C. §§ 621-625 (1994)). With some exceptions, the Mining Claims Rights Restoration Act opened to mineral location "[a]ll public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites * * *." 30 U.S.C. § 621(a) (1994). Among the exceptions are lands

which are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

Id.; see also Robert Farchi, 88 IBLA 273 (1985).

A letter from the FPC to the Director, BLM, dated May 19, 1953, gives notice of the reservation of lands for Project No. 2127-Montana in accordance with section 24 of the Federal Power Act of 1920. This notice withdrew from entry for Project No. 2127 those portions of the listed lands "located below the 3636-foot contour elevation," noting that application for a license had been filed on February 24, 1953. (Emphasis added.)

Among those lands described in the notice were lands in Lots 5, 6, and 7, and the SE¼SW¼, sec. 13, T. 11 N., R. 2 W., and Lots 4 and 5 and the SW¼SW¼, sec. 24, T. 11 N., R. 2 W., Montana Principal Meridian. Without further examination, it would appear that the lands upon which the claims had been located had been withdrawn from entry.

The map showing the location of the Roadrunner claim submitted by Sypult is a photocopy of a contour map with the claim drawn on it. ^{1/} The map shows the claim as lying on the Missouri River on the shore of Hauser Lake. The elevation of that lake is shown on the map as being 3,650 feet above sea level. Thus, all of the claims lie above that elevation. The question then is whether the notice of the reservation of lands for Project No. 2127-Montana withdrew the land subject to the claims from location, reserving that land for Project No. 2127. As quoted above, the May 19, 1953, FPC notice withdrew and reserved the land below the 3,636-foot contour elevation from entry. The claims are above the 3,650-foot elevation contour, and thus the land upon which the claims are located was not withdrawn from entry by the May 19, 1953, FPC notice of reservation of lands for Project No. 2127-Montana. The Decisions of the Montana State Office, BLM, declaring the Cleatus and Cleatus #1 lode mining claims (MMC 103650 and MIMMC 196930), and the Roadrunner placer claim (MIMMC 192880) null and void ab initio must, therefore, be vacated.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the June 13, 1995, Decision declaring the Cleatus #1 lode mining claim (MIMMC 196930) null and void ab initio, the June 16, 1995, Decision declaring the Roadrunner placer claim (MIMMC 192880) null and void ab initio, and the July 13, 1995, Decision declaring the Cleatus lode mining claim (MMC 103650) null and void ab initio are hereby vacated.

R.W. Mullen
Administrative Judge

I concur:

T. Britt Price
Administrative Judge

^{1/} The origin of the map is not identified. However, there is sufficient evidence on the face of the map to conclude that the photocopied map was a United States Geological Survey quadrangle map.